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NO. 90-103

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

PENNHURST STATE SCHOOL
& HOSPITAL, et al.,
Petitioners

v.

TERRI LEE HALDERMAN, et al.,
Respondents

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I. THIS CASE CURRENTLY IS BEING LITIGATED IN THE DISTRICT COURT, AND IS NOWHERE NEAR AN END

In their effort to dissuade this Court from granting certiorari, Halderman plaintiffs characterize this case as being "virtually at a successful and amicable end." Halderman Brief in Opposition at 1.

The reality is otherwise, and radically so. At the present time there are two contempt motions against several defendants, including Commonwealth defendants, pending before the district court. See Plaintiffs' Motion for Contempt to Compel Appropriate Management of Classmembers Funds, Dkt. entry 2,282; ARC/PA's Petition for a Finding of Contempt Against Philadelphia,

dkt. entry 2,290; See also Order Joining Commonwealth Defendants as Respondents to dkt. entry 2,290, dkt. entry 2,485. Each of the motions involves either the entire class or a significant fraction of the class. On June 19, 1990, the Commonwealth's Secretary of Public Welfare and his chief fiscal officer were deposed by both Halderman plaintiffs and ARC/PA plaintiffs regarding one of the motions. Commonwealth defendants had objected to the deposition, but the district court denied a motion for a protective order.

To characterize these circumstances as "amicable" is, to say the least, peculiar. Litigation is ongoing, and there is no reason why it is likely to stop anytime before the last class-member dies, circa 2050.

II. WHEN THE DISTRICT COURT LOST JURISDICTION ON JULY 1, 1989 (UNDER THE TERMS OF THE CONSENT DECREE) THIS MATTER WAS EFFECTIVELY DISMISSED, AND THE QUESTION OF RESIDUAL OR INHERENT JURISDICTION TO ENFORCE THE SETTLEMENT THEREFORE MUST BE REACHED HERE

Halderman plaintiffs (Brief at 7) and ARC/PA plaintiffs (Brief at 6) claim that the split in the circuits identified by Commonwealth defendants (petitioners herein) is not relevant to this case as the split concerns only matters which have been dismissed. But, of course, if the terms of the consent decree provided for loss of jurisdiction on July 1, 1989,[1] the case was thereby

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[1] As our jurisprudence nowhere recognizes either "inactive jurisdiction" or "passive jurisdiction," loss of "active jurisdiction" leaves the district court with no jurisdiction.

effectively dismissed from federal court on that date.[2] Accordingly, the question of "residual" jurisdiction, or "inherent" jurisdiction, or reacquisition of jurisdiction, about which the circuits indeed are split, remains and must be reached here. This should be no surprise to plaintiffs, who

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[2] Halderman plaintiffs (Brief at 4) and ARC/PA plaintiffs (Brief at 3) now interpret a 1986 amendment to the consent decree as extending jurisdiction over Commonwealth defendants until sometime in 1990. It is sufficient here to observe that no plaintiff ever made this claim prior to July 1, 1989; in fact, Halderman plaintiffs and ARC/PA plaintiffs, and the district court all expressly identified July 1, 1989 as the relevant date on multiple occasions in early 1989. See Dkt. entry 2,354 at 1; dkt. entry 2,355 at 1; dkt. entry 2,356 at 2; dkt. entry 2,361 at 1; dkt. entry 2,377 at 3; dkt. entry 2,379 at 9. (The Third Circuit assumed without deciding that July 1, 1989 was the relevant date. Slip op. at 21, n.15).

extensively briefed the "inherent jurisdiction" issue below, relying on the Aro line of cases. See Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir. 1976); Brief of ARC/PA at 21-26, Brief of Halderman at 14 (incorporating ARC/PA's brief).

CONCLUSION

This case continues to be litigated in the district court. The issues presented have general significance. Certiorari should be granted.

Respectfully submitted,

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Date: 8/30/90

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